

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT

BERNARD TEVELDE et al.,

Plaintiffs and Respondents,

v.

ALAN DALE JENAN,

Defendant and Appellant.

F041780

(Super. Ct. No. 02-200887)

OPINION

APPEAL from a judgment of the Superior Court of Tulare County. Melinda M. Reed, Judge.

Alan Dale Jenan, in pro. per., for Defendant and Appellant.

Fitzgerald, Aguilar, Sherwood, Durante & Johnson, and Joseph C. Durante, Jr., for Plaintiffs and Respondents.

-ooOoo-

The Jenan family and its agents (collectively the Jenans) have unsuccessfully litigated since 1997 a defaulted loan that the family had with the Bank of the Sierra (Bank). The loan default resulted in the foreclosure sale of at least two parcels of real

property that secured the loan. This action stems from Allen Dale Jenan's¹ holding over on one of the parcels after it was sold at a trustee's sale to respondents Tevelde. The Teveldes brought an action for unlawful detainer and the trial court granted summary judgment for them. Jenan moved to vacate the judgment for lack of subject matter jurisdiction. The court denied the motion and this appeal followed.

Jenan is in pro. per. and his contentions are not clear. As best we can determine, he contends: (1) because he is the heir of the original grantee who received legal title by a federal land patent from the United States and because the property is part of the land the United States acquired from Mexico pursuant to the Treaty of Guadalupe Hidalgo, any question as to the application of the land patent and treaty is within the exclusive jurisdiction of the federal court. Therefore, the Tulare County Superior Court lacked subject matter jurisdiction to determine the matter and the judgment is void.

Alternatively, (2) because he filed a UCC-1 financing statement the day before the foreclosure sale, he obtained priority as against any other security interest, including the interest underlying the foreclosure sale. Both contentions are specious; we will affirm.

¹ The complaint for unlawful detainer sought possession from four individuals and several entities. Only two of the individuals, Allen Dale Jenan and Otis Oren Gillis, appealed from the judgment. Gillis is a vexatious litigant subject to a prefilng order. He opted to dismiss his appeal rather than to provide the vexatious litigant bond this court required him to post as a condition of proceeding with the appeal. Jenan is the only remaining appellant.

FACTS AND PROCEDURAL HISTORY

Background²

Between 1992 and 1996, the Bank made loans totaling \$2.31 million dollars to Roger Jenan, appellant's brother. The loans were secured by real property known as the Linda Loma Ranch (the Ranch), which consists of at least two parcels that share the address of 4912 South Santa Fe Road in Visalia. Roger Jenan defaulted on the loans and the Bank commenced foreclosure proceedings on parcel No. 1 in 1997. In response, Roger Jenan and the Ranch partners, including appellant Allan Jenan, filed suit in federal district court alleging fraud against the Bank and others. The district court deemed the action frivolous and dismissed all causes of action without leave to amend.

Subsequently, a number of parties associated with the Ranch filed various actions in Bankruptcy Court attempting to forestall the foreclosure proceedings. The Bankruptcy Court rejected the efforts and parcel No. 1 was sold by trustee's sale to the Tevelde in 1997.

Meanwhile, Jenan and others filed an action in Tulare County Superior Court against the Tevelde and the Bank alleging 19 claims, including quiet title, fraudulent conveyance, and surety fraud involving the same foreclosed property. The superior court entered judgment in favor of defendants. The next day, Roger Jenan filed an action in

² Background information is taken from the Tevelde's motion for judicial notice of the pleadings and rulings in related bankruptcy actions and a federal district court action, *Alan Dale Jenan et al. v. Tevelde et al.*, case No. CIV F-01-5465, and its subsequent appeal to the Ninth Circuit Court of Appeals. The motion was made on the grounds that the same issues, parties, and general operative facts raised in this appeal were raised and determined in Jenan's federal action regarding property similarly situated to the property at issue in this appeal. We granted the motion for judicial notice on March 24, 2003 in order to address former appellant Otis Gillis's request for permission to pursue the appeal (Code of Civ. Proc., § 391.7) given his status as a vexatious litigant. Further statutory references are to the Code of Civil Procedure unless otherwise indicated.

superior court to set aside the trustee's sale alleging facts involving the same defendants, real property, loans, and foreclosure proceedings. The court sustained defendants' demurrer without leave to amend and entered judgment for defendants. Following that order, the superior court granted the Teveldes' motion and declared several of the parties associated with the Ranch to be vexatious litigants subject to a prefiling order preventing them from filing any new litigation absent the permission of the presiding judge.

In April 2001, Jenan and others sued the Teveldes in federal court in an action for ejectment and mesne profits alleging the same claim as to parcel No. 1 that Jenan now asserts as to parcel No. 2. Jenan alleged that he held legal title to the foreclosed on property based on four 1919 land grants by letter patent from the United States to his ancestors. And, the Teveldes had "unlawfully ousted" him from the property. Jenan asserted four bases of federal subject matter jurisdiction: the Treaty of Guadalupe Hidalgo, three federal questions, various federal statutes, and the "U.S. Government's contractual obligation to assignees of the Land grants by Letters Patent." The court found no factual basis for the exercise of federal subject matter jurisdiction and dismissed the action.

The Jenans appealed that decision to the Ninth Circuit Court of Appeals, which summarily affirmed finding the issues raised so insubstantial as not to require further argument.

The Current Action

Beneficial California, Inc. (Beneficial), the beneficiary, retained Housekey Financial Corporation (Housekey) as trustee to initiate foreclosure proceedings for default under a deed of trust dated April 26, 1993. The trustors under the deed of trust were Clarence and Robbie Jenan, Roger Jenan, and appellant Allen Jenan. The deed of trust encumbered a 7.55-acre parcel (parcel No. 2) located at 4912 South Santa Fe Road in Visalia, which is adjacent to parcel No. 1, which was foreclosed on in 1997. Housekey complied with the mandates of Civil Code section 2924 for a valid trustees sale.

The Teveldes offered the highest bid at the trustee's sale, \$175,000, and paid that amount to Housekey. Housekey executed its "Trustee's Deed Upon Sale" conveying its interest in the property to the Teveldes. That deed was recorded on June 3, 2002.

When Jenan refused to relinquish possession of the property, the Teveldes served a three-day notice to quit and filed a complaint for unlawful detainer. Jenan raised a host of procedural and substantive defenses by answer to the complaint, including that his legal title was guaranteed by the Treaty of Guadalupe Hidalgo, which also guaranteed a priority security interest pursuant to California Uniform Commercial Code section 9311.

The Teveldes moved for summary judgment, proffering evidence to establish they were entitled to a judgment of possession. The evidence established that: (1) the trustee's sale under which they purchased the property was held in compliance with Civil Code section 2924; (2) the Teveldes duly perfected title following the sale; (3) the Teveldes served Jenan with a three-day notice to quit following the trustee's sale; and (4) Jenan held over after he was served with the notice to quit. The Teveldes noted that Jenan's challenges to their title were not cognizable in the unlawful detainer action. In addition, they provided the applicable dismissal order of the Bankruptcy Court to disprove the affirmative defense that a bankruptcy proceeding required that the action be stayed. And, they provided a "Stipulated Judgment Modifying Loan and Quieting Title Re: Deed of Trust" to counter the affirmative defense that Beneficial lacked title to the property.

Jenan filed a declaration in opposition to the motion for summary judgment reiterating his affirmative defenses, but failed to support any of the assertions with evidence. The trial court granted summary judgment for the Teveldes finding they were entitled to judgment as a matter of law.

Jenan moved the court to judicially notice certain land patents, the Treaty of Guadalupe Hidalgo, and other documents and laws, and to vacate the summary judgment

on the ground the court lacked subject matter jurisdiction to hear the case. The trial court denied the motions and entered judgment for the Teveldes.

DISCUSSION

Jenan does not challenge the grant of summary judgment for the Teveldes on their action for unlawful detainer on grounds other than the two listed above. Thus, we do not address the merits of the motion, which in any event, as set forth in the statement of facts, appears to have been properly granted.³

1. The Tulare County Superior Court did not lack subject matter jurisdiction to determine the unlawful detainer action.

The summary remedy of unlawful detainer is available against persons holding over after sales under the power of sale contained in a deed of trust, after the sale has been duly perfected. (§ 1161a, subd. (b)(3).) Unlawful detainer jurisdiction lies in the superior court and proper venue is the county in which the property is situated. (§ 392, subd. (1)(a); 7 Miller & Starr, Cal. Real Estate (3d ed. 2001) § 19:213, pp. 680-681.) Because parcel No. 2 was situated in Tulare County, the Tulare County Superior Court had subject matter jurisdiction to determine the matter pursuant to section 1161a, subdivision (b)(3) and section 392, subdivision (1)(a).

Notwithstanding this settled law, Jenan asserts that jurisdiction to decide possession of parcel No. 2 lies exclusively in federal court pursuant to 28 United States Code section 1331. That section provides “[t]he district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the

³ Jenan requests that we take judicial notice of specified exhibits. We deny this request. Although we do consider *applicable* statutes and other authority, Jenan’s request that we judicially notice exhibits that are merely copies of such “authority” is also denied. None of the exhibits is either material, relevant, or applicable.

United States.” Jenan reasons that the parcel was at one time part of the land sold by Mexico to the United States pursuant to the Treaty of Guadalupe Hidalgo,⁴ and subsequently was conveyed by land grant or patent to his predecessor and “his heirs and assigns forever to have and to hold.” Jenan argues that because the land grant was created by the United States Congress, issues related to the parcel are subject to exclusive federal court jurisdiction, and the judgment entered by the Tulare County Superior Court is void.

The argument is ludicrous. We decline to dignify it with a lengthy discussion of the “issue,” particularly since Jenan fails to provide either a factual nexus or any law whatsoever supporting his contention. Suffice to say that cases arising under 28 United States Code section 1331 involve a federal question. No federal question is implicated here and none is proffered. Neither the original conveyance nor the terms of the treaty are relevant to the issue of who is entitled to possession in this unlawful detainer action following a sale under a deed of trust, created long after the original conveyance.⁵

⁴ All public lands in California belonging to the Mexican government became public lands of the United States upon the signing of the Treaty of Guadalupe Hidalgo in 1848. (*Phelan v. Poyoreno* (1887) 74 Cal. 448; 4 Witkin, Summary of Cal. Law (9th ed. 1987) Real Property, § 4, p. 218.)

⁵ Jenan has requested that the court take judicial notice of 23 documents, which he contends constitute admissions that “shed light on the fraud and misrepresentations” of opposing counsel and “his lack of due diligence in researching the facts of the case,” and set forth the law that controls this case. Respondents oppose judicial notice of some of the documents. We will grant the motion as to exhibits F through S, which respondents do not oppose. Exhibits F through S are copies of statutes, provisions of the California and United States Constitutions, and two Acts of Congress. (Evid. Code, § 451, subd. (a) [mandatory judicial notice of constitutional and public statutory law of this state and the United States].) However, although we take judicial notice, we find the materials inapplicable to the controversy before us. (*People ex rel. Lockyer v. Shamrock Foods Co.* (2000) 24 Cal.4th 415, 422, fn. 2.) We deny the motion as to the remaining documents as we find them irrelevant to the issues on appeal. (*Ibid.*)

When Jenan executed the deed of trust, title passed to the trustee Beneficial/Housekey, who held it until the Jenan's default. After the trustee's sale, title passed from the trustee to the Teveldes, who acquired Jenan's interest as of the date the deed of trust was recorded. (3 Witkin, Summary of Cal. Law (9th ed. 1987) Security Transactions in Real Property, § 5, p. 517; see *Sain v. Silvestre* (1978) 78 Cal.App.3d 461, 471.) As the court had subject matter jurisdiction and all necessary procedural steps were followed, the Teveldes acquired good title and possession.

2. Did Jenan's filing of a UCC-1 form the day before the foreclosure sale affect the Teveldes' right to possess the property?

In opposition to the motion for summary judgment, Jenan argued that he had a "priority security position and possession of the property senior to any claimed by [the Teveldes] by virtue of a recorded UCC-1 filed and recorded with the California Secretary of State on May 28, 2002, as Instrument No. 214860790."

Without citation to authority, he argues on appeal that the Treaty of Guadalupe Hidalgo, the land grant by letters patent and "U.S. statutes verify [his] possession and ownership requirements leading up to this California Statute, (codified at California Commercial Code 9311), which removes all doubt as to [his] priority security interest position senior to any claimed by [the Teveldes] with their disputed Trustee's Deed Upon Sale for property in which the beneficiary lacked a security interest by virtue of its breach of contract with [Jenan] as evidenced in the loan documents."

Again, without citation to the record or any authority, he argues that he has a perfected security interest which supercedes all other claimed security interests. And, "[his] security interest ... is automatic and has attached prior to this action and has priority for possession by [Jenan] against all of the unsubstantiated allegations of [the Teveldes]." In addition, the court violated California Uniform Commercial Code section 9311 by granting summary judgment for the Teveldes because Civil Code section 2924 (transfer as security deemed a mortgage) was suspended pursuant to Civil Code section

2944⁶ and by his filing of a UCC-1 financing statement the day before the foreclosure sale.

“[Jenan is] the secured party pursuant to Commercial Code Section 9311 as related hereinabove, and [Jenan has] not made an election pursuant to subparagraph (B) of paragraph (1) of subdivision (a) of Section 9604⁷ of the Commercial Code. The Civil Code Section 2924, on which [the Tevelde] rely for their alleged foreclosure sale and trustee’s deed upon sale, has no application to the property of [Jenan], who [has] a priority security interest to any other party as referenced hereinabove. Since [the Tevelde] are estopped from this action due to their lack of standing in this

⁶ Civil Code section 2944 provides:

“None of the provisions of this chapter applies to any transaction or security interest governed by the Commercial Code, except to the extent made applicable by reason of an election made by the secured party pursuant to subparagraph (B) of paragraph (1) of subdivision (a) of Section 9604 of the Commercial Code.”

⁷ California Uniform Commercial Code section 9604 provides:

“(a) If an obligation secured by a security interest in personal property or fixtures is also secured by an interest in real property or an estate therein:

“(1) The secured party may do any of the following: [¶] ...

“(B) Proceed in any sequence, as to both, some, or all of the real property and some or all of the personal property or fixtures in accordance with the secured party’s rights and remedies in respect of the real property, by including the portion of the personal property or fixtures selected by the secured party in the judicial or nonjudicial foreclosure of the real property in accordance with the procedures applicable to real property. In proceeding under this subparagraph, (i) no provision of this chapter other than this subparagraph, subparagraph (C) of paragraph (4), and paragraphs (7) and (8) shall apply to any aspect of the foreclosure; (ii) a power of sale under the deed of trust or mortgage shall be exercisable with respect to both the real property and the personal property or fixtures being sold; and (iii) the sale may be conducted by the mortgagee under the mortgage or by the trustee under the deed of trust. The secured party shall not be deemed to have elected irrevocably to proceed as to both real property and personal property or fixtures as provided in this subparagraph with respect to any particular property, unless and until that particular property actually has been disposed of pursuant to a unified sale (judicial or nonjudicial) conducted in accordance with the procedures applicable to real property, and then only as to the property so sold.”

court, their Unlawful Detainer action is moot. Any judgment rendered by this SUPERIOR COURT is null and void as a matter of law.”

Respondents, understandably unable to decipher these claims, merely state that Jenan’s “sham” filing does not establish a priority over the lender’s power of sale and that California Uniform Commercial Code section 9311 is inapplicable.

We summarily reject Jenan’s contention as they reflect a number of fundamental misunderstandings regarding division 9 of the California Uniform Commercial Code (§§ 9101 to 9709) as it pertains to the creation, attachment, perfection, and priority of security interests in certain types of collateral.

Generally, division 9 applies only when the collateral is personal property; it does not apply to real estate. California Uniform Commercial Code section 9109, subdivision (d)(11), states that division 9 does not apply to “[t]he creation or transfer of an interest in or lien on real property, including a lease and rents thereunder,” except for certain listed exceptions. Jenan does not argue that his interest in the real property falls within any of the listed exceptions and it does not appear that any are applicable.

To the extent Jenan intended to raise other issues, his arguments are unintelligible. When the appellate court cannot understand a party’s claims and arguments, it cannot consider them and will deem them to be abandoned. (*Landry v. Berryessa Union School Dist.* (1995) 39 Cal.App.4th 691, 699-700.) Further, the court discusses only those arguments that are sufficiently developed to be cognizable. (*San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1996) 42 Cal.App.4th 608, 626.) Jenan’s contentions are not supported by any rational discussion applying the limited law he cites to the facts of the case as set forth in the appellate record. Consequently, we deem any contentions in addition to those discussed above to be abandoned.

DISPOSITION

The judgment is affirmed.

Buckley, Acting P.J.

WE CONCUR:

Wiseman, J.

Levy, J.